



Testimony of

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Subcommittee on Railroads  
of the  
Committee on Transportation and Infrastructure

*“Current Issues in Rail Transportation of Hazardous Materials”*

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Mr. Chairman, thank you for calling today's hearing on a subject of great importance both to the chemistry sector I represent and the nation at large. And thank you too for this opportunity to share our sector's views with you and the members of this Subcommittee.

I am Marty Durbin, Managing Director of Federal Legislative Affairs with the American Chemistry Council ("ACC"). ACC is the trade association representing the companies that make the chemicals that make modern life possible. Today, I will speak about the importance of safely moving hazardous material by rail, and how we can work together to continuously improve that system.

Products supplied by the chemistry sector are essential in manufacturing, agriculture, energy, transportation, technology, communications, health, education, defense, and virtually every aspect of our lives. Basic industrial chemicals are the raw materials for thousands of other products including plastics, water treatment chemicals, detergents, pharmaceuticals and agricultural chemicals. These applications include medicines and medical technologies that save our lives, computers that expand our horizons, foods we eat, water we drink, cars we drive, homes in which we live, and clothes we wear.

Our \$550 billion dollar industry employs more than one million people in all 50 states, and accounts for 10 percent of all US merchandise exports. In fact, more than 96% of all manufactured goods are directly touched by chemistry.

Chemicals are essential for the life of the nation, and Congress has wisely established a comprehensive, national, hazardous material transportation system, which is administered by the U.S. Department of Transportation ("DOT"). The goal of that system is to ensure that chemicals and other hazardous materials are delivered safely and reliably. The goal is not to prevent their movement.

Turning specifically to the subject of today's hearing, I want to emphasize that rail transportation is critical to ACC's membership and to all of the industries and people who depend on us. While there have been tragic hazardous materials rail incidents in the past few years, rail remains a remarkably safe way to ship hazardous materials. And ACC's member companies are committed to continuous safety improvement – not only in transportation of our products, but also in all other aspects of their business.

Through ACC's Responsible Care® initiative, member companies have committed to implement a set of goals and guidelines that go above and beyond federal regulation on health, safety, security and the environment. Our commitment to continuous safety improvement naturally includes transportation. And a cornerstone of this effort is our focus on training for our operational personnel and those who are involved with all aspects of transportation and distribution.

I'd like to highlight some of our activities:

- For almost 35 years, ACC has operated CHEMTREC® (**Chemical Transportation Emergency Center**), a 24/7 hotline for emergency responders from the public and private sectors that provides crucial information and assistance for transportation incidents involving chemicals and hazardous substances.
- In the 1980s, ACC members, the railroads and other transportation partners developed TRANSCAER® (**Transportation Community Awareness Emergency Response**), a voluntary national outreach effort that helps communities prepare for and respond to possible hazardous material transportation incidents.
- ACC holds a seat on the Tank Car Committee (“TCC”) of the Association of American Railroads (“AAR”). TCC has a mandate from DOT to evaluate tank car design and specifications from the perspective of furthering safety. For many years ACC has found TCC to be an effective forum in which this important risk-management factor has been addressed in a collaborative and purposeful manner. We do, however, have concerns about the manner in which TCC is currently looking at car designs for two specific products.
- ACC is pleased to have been added recently as a voting member of DOT’s Railroad Safety Advisory Committee.

Hazardous materials transportation safety – *the avoidance of accidents and accidental releases of hazardous materials* – is a primary focus for ACC, our member companies, the broader chemistry sector, our transportation partners and the emergency responders with whom we work every day. Together, we have invested billions of dollars in training, systems, technology and tank car safety and we will continue to do so in the future. Hazardous materials transportation safety is good business.

Experience, engineering science and common sense teach us that in the rail mode, hazardous materials safety is the result of many interrelated factors including:

- Overall safety of rail operations, including track conditions and the condition of the associated rail infrastructure such as signaling (“dark territory”).
- Placement of tank cars within trains, and their coupling to other cars.
- Training, supervision and staffing of train crews to ensure operational safety.
- Ongoing inspections of equipment.
- Proper use of appropriate cars for the movement of specific hazardous materials.
- Design and construction of tank cars.

Let me particularly address the training and staffing issues. As customers of rail service, we are concerned about testimony presented by representatives of rail labor unions at the recent DOT hazardous materials meeting (May 31 and June 1) regarding the railroads' reported training and staffing deficiencies. We agree that proposals to permit one-person train crews should not be considered until proven technology solutions are in place to allow for safe operations with a single crew member.

Sometimes, when a railroad experiences rapid growth in business, there appear to be insufficient railroad personnel to safely transport hazardous materials. Operational safety also can be compromised when hazardous materials are left on un-crewed trains for lengthy periods of time, and transported by tired and inadequately trained crews. Failure to follow these safety guidelines can lead to otherwise avoidable accidents.

According to DOT data, railroad safety performance has reached a plateau. The Federal Railroad Administration's "Action Plan for Addressing Critical Railroad Safety Issues," released in May 2005, reports "the train accident rate has not shown substantive improvement in recent years." From 1995 through 2004, the train accident per million train mile rate has hovered between a low of 3.54 and a high of 4.25. In fact, the rate was higher in 2004 (4.09) than in 1995 (3.67). [FRA Action Plan, May 16, 2005, pps.1 and 2.]

DOT cites several factors, which is why we strongly believe that a comprehensive review of hazardous materials rail safety must be conducted. We applaud DOT for holding a wide-ranging public meeting on hazardous material rail transportation safety, and believe that meeting was an important first-step to help ensure that the public and private resources devoted to hazardous materials rail safety will be effective.

ACC strongly supports a comprehensive, multi-stakeholder review of the complex and interrelated aspects of hazardous materials rail transportation safety. In our view, the appropriate approach includes:

- A systems review, including tank car design, railroad operational procedures, rail infrastructure and track construction and maintenance, and emergency response.
- Realistic and specific design standards that quantify the performance of current or proposed tank car designs based on verifiable physical characteristics. ACC believes that this approach should certainly incorporate findings from DOT research currently being conducted by DOT's Volpe National Transportation Systems Center under a provision of SAFETEA-LU. [Subsection 9005(b), now codified in 49 US Code, Section 21055.] Results of this study are expected this winter.
- Appropriate risk and cost-benefit analyses of proposed changes in hazardous materials transportation regulation and practices to ensure they are cost-effective and cost-efficient.

- A prioritized implementation timetable for proposed modifications.

We are also encouraged about the conference convened by FRA under authority in 49 U.S. Code Section 333 to discuss ways to minimize risk from rail transportation of certain hazardous materials. This process was requested jointly by AAR and ACC and the parties met yesterday at DOT. This ongoing conference will examine opportunities to reduce risk through railroad rerouting and product swaps.

DOT has established clear, specific, science-based regulations to ensure the safe transportation of hazardous materials. Violations of the hazardous materials regulations are subject to civil and criminal sanctions, which were raised significantly in SAFETEA-LU. [Sections 7120 and 7121, now codified in 49 US Code, Sections 5123 and 5124.]

This system appropriately places legal liability on the party or parties that are responsible for an incident. Railroads, as well as hazardous materials shippers and other entities, should continue to bear liability for their own actions. Removing that liability, or shifting it to the Federal Government or other private parties, could have unforeseen and undesirable consequences. Indeed, our concern is that such a change could erode safety performance by the carriers and create a significant disincentive to address the many factors that add up to rail hazardous materials transportation safety.

An important related matter is the “common carrier obligation,” under which railroads are required to transport commodities – whether or not hazardous – for their customers. The Interstate Commerce Clause of the Constitution grants power to the Congress to write the laws that govern our nation’s commerce. Congress recognized the common carrier obligation as the framework on which the entire national railroad transportation system was founded. [49 US Code, Subsection 11101(a).] And it remains crucial today. Railroads are chartered to operate in the public interest because the public depends on safe and reliable service in the delivery of a wide range of products on which we all depend.

Finally, I want to address one of the most critical components of hazardous material transportation safety – emergency response. Swift and appropriate response to accidents will save lives not only of the public but of the responders themselves.

ACC’s CHEMTREC® program, now in its 35th year, provides a successful blueprint for sharing expertise and experience with today’s emergency responders. Located in our headquarters building in Arlington, CHEMTREC is recognized by DOT and other federal agencies as a valuable source of information and expert counsel regarding hazardous materials incidents. When an incident takes place, responders contact CHEMTREC immediately to determine the best way to handle a wide range of hazardous substances including radioactive materials, infectious substances, biohazards, and hazardous waste. Our state-of-the-art emergency center is a 24/7 reminder of the commitment we make to enhance the safety of every hazardous material shipment, and the people whom it may affect.

I want to personally invite the members of this Subcommittee – and staff – to tour our CHEMTREC Emergency Center in Rosslyn to see how we work with local responders to help protect your communities. I will follow up with the staff director to determine an appropriate time for such a tour and discussion.

I also want to ask for the Subcommittee’s help to ensure that emergency responders nationwide are informed community emergency preparedness resources – such as CHEMTREC® and TRANSCAER® -- and how our industry can help communities develop, review and implement effective emergency response plans. Your assistance can help us develop even more rapid and reliable systems to share information between shippers, railroads and emergency responders and develop sustainable, public-private distributive training programs for responders. I look forward to discussing these ideas with you both today and in the future.

The nation needs a safe and reliable system of hazardous material rail transportation, governed by uniform, national rules. That is the system we have today, and the challenge – for both the private and public sectors – is to ensure that this system continuously improves. We look forward to working closely with this Subcommittee, the Congress, the Department of Transportation and the other stakeholders to continuously enhance the safety of hazardous material rail transportation.

Thank you for allowing the American Chemistry Council to present its views to the Subcommittee. I would be glad to respond to answer any questions.

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